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| 10/657,065 | 09/09/2003 | Nancy Lucas | 005216.00013 | 9198 |

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CARGILL, INC.
15407 MCGINTY ROAD WEST
WAYZATA, MN 55391-2399

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| EXAMINER |
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PASCUA, JES F

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| ART UNIT | PAPER NUMBER |
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3782

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01/14/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/657,065

Applicant(s)

LUCAS ET AL.

Examiner

Jes F. Pascua

Art Unit

3782

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2,4-17,19-32,42,44 and 46-65 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2,4-17,19-32,42,44 and 46-65 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 10/31/07.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114 was filed in this application after appeal to the Board of Patent Appeals and Interferences, but prior to a decision on the appeal. Since this application is eligible for continued examination under 37 CFR 1.114 and the fee set forth in 37 CFR 1.17(e) has been timely paid, the appeal has been withdrawn pursuant to 37 CFR 1.114 and prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on 10/31/2007 has been entered.

Claim Objections

2. Claim 58 is objected to under 37 CFR 1.75 as being a substantial duplicate of claim 55. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 2, 5, 8-15, 19, 21, 24-29, 31, 32, 42, 48-54, 59, 61 and 65 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,338,117 to Kucksdorf et al. and U.S. Patent No. 3,249,285 to Dollheimer et al.

Kucksdorf et al. discloses the claimed device except for the first handle formed by one of a cut and a series of perforations formed through the stack, and the stack of panels includes a double stack of panels formed from the first portions of the opposing panels folded over along a fold line transverse to the longitudinal direction and attached to themselves. Dollheimer et al. discloses that it is known in the art to provide a handle formed from a flap including a stack of panels formed from first portions of opposing panels, the handle being formed by one of a cut and a series of perforations formed through the stack, and the stack of panels includes a double stack of panels formed from the first portions of the opposing panels folded over along a fold line transverse to the longitudinal direction and attached to themselves. See Fig. 2. It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the first handle of Kucksdorf et al. by including a stack of panels formed from the first portions of the opposing panels, the first handle is formed by one of a cut and a series of perforations formed through the stack, and the stack of panels includes a double stack of panels formed from the first portions of the opposing panels folded over along a fold line transverse to the longitudinal direction and attached to themselves, as taught by Dollheimer et al., in order to increase the carrying strength of the first handle.

Regarding claims 8, 10, 25, 29, 48 and 50, Kucksdorf et al. and Dollheimer et al. disclose the claimed device, as discussed above, except it is unclear if the Kucksdorf et al. bag contains loose material. In the description of the prior art, Kucksdorf et al. discloses that it is known in the art to provide loose materials "such as pet food, coffee, or similar granular products" within square-bottom bags. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the bag of Kucksdorf et al. with the loose materials of the prior art bags, since one of the objects of the Kucksdorf et al. invention is to provide a bag having handle means usable for carrying and/or dispensing contents. Applicant's remarks, filed 10/31/2007, do not traverse the Examiner's statement of obviousness. Therefore, the statement is taken to be admitted prior art.

Regarding claims 9, 24, 32 and 49, Kucksdorf et al. and Dollheimer et al. discloses the claimed invention, as discussed above, except for the contents of the bag being salt. It would have been an obvious matter of design choice to contain salt within the Kucksdorf et al. bag, since applicant has not disclosed that salt within a bag solves any stated problem or is for any particular purpose and it appears that the Kucksdorf et al. invention would perform equally well with salt contained therein. Applicant's remarks, filed 10/31/2007, do not traverse the Examiner's statement of obvious design choice. Therefore, the statement is taken to be admitted prior art.

5. Claims 4, 16, 17, 20, 30, 44, 55-58, 60, 62 and 64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kucksdorf et al. and Dollheimer et al. as applied to claim 5 above, and further in view of U.S. Patent No. 5,593,229 to Warr.

Kucksdorf et al. and Dollheimer et al. disclose the claimed device, as discussed above, except for the first end having a tear seam. Warr discloses that it is known in the art to provide a tear seam at a first end of an analogous bag. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the first end of the Kucksdorf et al. bag with the tear seam of Warr, in order to facilitate opening the bag and to form a pour spout for dispensing contents.

Regarding claims 16, 17, 30, 56 and 57, Kucksdorf et al., Dollheimer et al. and Warr disclose the claimed invention, as discussed above, except for a second tear seam at the second end of the bag. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a second tear seam at the second end of Kucksdorf et al., since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. Applicant's remarks, filed 10/31/2007, do not traverse the Examiner's statement of obvious duplication of essential working parts. Therefore, the statement is taken to be admitted prior art.

Regarding claims 4, 20 and 44, Kucksdorf et al., Dollheimer et al. and Warr, disclose the claimed device, as discussed above, except for the first handle having a patch and a cut extending through the patch. Warr further discloses that it is known in the art to provide a patch with a cut on the handle of an analogous bag. It would have

been obvious to one having ordinary skill in the art at the time the invention was made to provide the first handle of Kucksdorf et al. with the patch having a cut of Warr, in order to reinforce the handle.

6. Claims 2, 5-8, 10, 13-15, 19, 21-23, 25, 27-29, 31, 42, 46-48, 50, 53, 54, 59, 61 and 63 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,782,562 to Anspacher and U.S. Patent No. 3,249,285 to Dollheimer et al.

Anspacher discloses the claimed device except for the first handle formed by one of a cut and a series of perforations formed through the stack, and the stack of panels includes a double stack of panels formed from the first portions of the opposing panels folded over along a fold line transverse to the longitudinal direction and attached to themselves. Dollheimer et al. discloses that it is known in the art to provide a handle formed from a flap including a stack of panels formed from first portions of opposing panels, the handle being formed by one of a cut and a series of perforations formed through the stack, and the stack of panels includes a double stack of panels formed from the first portions of the opposing panels folded over along a fold line transverse to the longitudinal direction and attached to themselves. See Fig. 2. It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the first handle of Anspacher by including a stack of panels formed from the first portions of the opposing panels, the first handle is formed by one of a cut and a series of perforations formed through the stack, and the stack of panels includes a double stack of panels formed from the first portions of the opposing panels folded over along a

fold line transverse to the longitudinal direction and attached to themselves, as taught by Dollheimer et al., in order to increase the carrying strength of the first handle.

Regarding claims 23 and 47, the recitation "injection-molded plastic handle" does not define over the rigid plastic handle of Anspacher. The method of forming the handle is not germane to the issue of patentability of the handle itself. Therefore, this limitation has not been given patentable weight.

As a note, Anspacher discloses the body being sealed at seam 82 by heat sealing (column 6, lines 12-16), which meets the recitation "non-resealable sealed body".

Response to Arguments

7. Applicant's arguments with respect to claims 2, 4-17, 19-32, 42, 44 and 46-65 have been considered but are moot in view of the new grounds of rejection.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

9. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F. R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims

"define a patentable invention" without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear Issue requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 714.02 and MPEP 2163.06. The "disclosure" includes the claims, the specification and the drawings.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jes F. Pascua whose telephone number is 571-272-4546. The examiner can normally be reached on Mon.-Thurs..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Jes F. Pascua
Primary Examiner
Art Unit 3782

JFP